

over Liquid Audio, ON1, ECN Article, Ginter and further in view of a second Office Notice by the Examiner of ordinary skill in the art (ON2). Applicants respectfully traverse the above rejections.

The Liquid Audio Reference and ON1

Regarding Liquid Audio and ON1, the Examiner contends that Liquid Audio teaches a majority of the invention as described in all of the claims. The Examiner states that Liquid Audio teaches or suggests a secure Internet music on-demand delivery system, including an encrypted and secure delivery system, a music server, and media player software on the user's computer. However, the Examiner could not find every element of the claims, made certain assumptions about the way Liquid Audio functions and took Official Notice of those assumptions to be ordinary skill in the art.

Regarding claims 3, 42, 81, and 83, one of the Examiner's assumptions, in ON1, is when a consumer views sound track information with a displayed purchase price the consumer is viewing "an offer formulated by the music distribution server." Applicants assume that the Examiner is equating this with the claim element of "formulating one or more offers based on predefined business rule parameters wherein the one or more offers are associated with the selected item of information." Applicants respectfully disagree with the Examiner's assumption. The "formulating" step involves "business rules which govern the use, sale and distribution of the content. Business rules for a particular piece of content may include price range, conditions of sale and duration of an offer." Specification, page 6, lines 2-4. Further, every entity in the value-chain is bound to the business rules.

the E-contract and the content-specific business rules. If the offer is consistent with the offer and the rules, it is electronically certified.

Specification, page 23, line 4 to page 24, line 7. The candidate offer becomes a certified retail offer and is offered to the consumer.

Another type of offer is a default offer.

The distributor ... creates a default offer for the content[,] ... [that] provides actual commercial terms for consumers to acquire the content, and may be included with the content where the distributor is also acting as the retailer. A default offer may have no expiration date, i.e., it is valid in perpetuity. The distributor may set prices in the default offer as a function of time. Alternatively, the default prices may be updated periodically or on-demand when the consumer is ready to “consume” the content. The default offer may also be used as a template by retailers assisting in the creation of retail offers.

Specification, page 14, line 20 to page 15, line 5.

Given the above, Liquid Audio is silent regarding any of the above details of creating offers, and thus does not teach or motivate the “formulating” step. Additionally, one of ordinary skill would not assume the multi-faceted and complex disclosure described above based on the simple assumption that a price is displayed.

Thus, pursuant to MPEP § 2144.03, Applicants request an affidavit from the Examiner regarding those facts of which official notice is taken. Specifically, Applicants request the facts surrounding the statement that a published price is an offer formulated by business rules.

Regarding claims 8 and 47, which recite “generating rights data which determine the one or more offers associated with the information requested.” Liquid Audio does not disclose or suggest rights data that determines the offers. As above, the displaying of a purchase price is assumed by the Examiner and Liquid Audio does not suggest or motivate one to utilize rights data in displaying

ECN Article and Ginter, Applicants respectfully submit that the references are not enabling and that the Examiner is improperly using hindsight to reject the claims.

The ECN Article is a article regarding the SOFTBANK product, The Rights Exchange, which “enables companies to assign business rules to digital content.” The ECN article is not an enabling disclosure because, at the time the article was written, the inventors were not in full possession of the invention. The ECN Article states that SOFTBANK is “developing the infrastructure” and “is offering organizations a chance to get in on the ground up.” SOFTBANK had not progressed to the point where they could test the system (“pilot testing is expected early [1998]”). Additionally, SOFTBANK, at the time the ECN Article was written, was looking partners, or, better said, capital to fund the broad and vague concept of rights data. Thus, there is no indication that SOFTBANK actually had full possession of the concept of rights data or how this data would function in assisting in the distribution of digital content.

Further, if the Examiner maintains that SOFTBANK had possession of the invention, the vague comment is not a written description or an enabling disclosure of any method or system of electronic contracts and offer/sale processing, nor is there a teaching of how to handle any such offers or validation and does not suggest the claimed invention. Applicants submit that the Examiner is improperly using hindsight to reject the claims. The above statements do not enable one of ordinary skill in the art to practice SOFTBANK’s supposed invention.

Regarding, Ginter, Applicants submit that the reference is vague and does not enable one of ordinary skill in the art to practice the claimed invention. Ginter is over 300 pages long, with 146 pages of drawings and 159 pages of text. The text of Ginter reads as grand vision of digital rights management and the inventors compiled a “laundry list” of elements for electronic financial

discussion on traveling objects is for “content objects”. This disclosure is cited by the Examiner on column 131 line 58 to column 132, line 12. “[C]ontent objects 880 include or provide information content. This “content” may be any sort of electronic information. For example, content may include: computer software, movies, books, [or] music.” Ginter, column 131, lines 59-63. Thus, Ginter does not teach traveling objects without content. Further, one of ordinary skill in the art at the time of the invention is not motivated to remove the content from the traveling object.

Neither Ginter nor the ECN Article are enabling nor do they teach or suggest the elements of the claims 5, 9-11, 17, 25-27, 29-30, 32-36, 38-41, 44, 48-50, 56, 64,-66, 68-69, 71-75, and 77-80. Further, the above claims depend from claims 3 and 42 and are allowable based on the fact that claims 3 and 42 are distinguished from Liquid Audio and ON1.

Official Notice 2 (ON2)

The Examiner contends that Liquid Audio, ON1, the ECN Article and Ginter disclose all of the elements of claims 6-7, 37, 45-46, 76, and 88 except offering alternative offers and the Examiner takes Official Notice (ON2) of a “real deal” sales technique. Regarding ON2, the Examiner assumes that once a “trial offer” is made that it is of ordinary skill in the art to then offer the “real deal.” In the Examiner’s example, a trial offer is made for a user to access an item of content for a week, wherein once the week has expired; the user cannot access the content and is then offered a subscription or the “real deal” for further access to the content.

Applicants respectfully disagree with the Examiner’s assumption and ON2. The offers in the present invention do not function as the Examiner assumes. First, a distributor “creates a default offer for the content ... [that] provides actual commercial terms for consumers to acquire the

a validated offer since the user is allowed access to the content. The example in Ginter, cited by the Examiner (column 205, lines 21-31), is also based on the same assumption, that the consumer has had access to the content prior to the “real deal” or the request to purchase “new PERCs (permission records).” Both the Examiner’s assumption and Ginter’s example are contrary to the “formulating”, “validating”, and “providing” steps recited in the claims. Additionally, there is no teaching or suggestion in Liquid Audio, the ECN Article, or Ginter to create multiple offers and have the offers set in a hierarchal fashion, wherein if one offer cannot be validated, another can be made to the consumer.

In conclusion, the three references, Liquid Audio, the ECN Article and Ginter, alone or in combination, do not teach or suggest the elements of the claims. Additionally, many of the Examiner’s key assumptions, ON1 and ON2 are either improper, or are not supported by the references. Applicants respectfully request reconsideration of the claims and withdrawal of the rejections.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

By

Louis J. DelJuidice

Registration No.: 47,522

DARBY & DARBY P.C.

P.O. Box 5257

New York, New York 10150-5257

(212) 527-7700

(212) 753-6237 (Fax)

Agent For Applicants